



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Discount Machinery and Equipment, Inc.
File: B-230721
Date: June 9, 1988

DIGEST

Protester is not an interested party to protest that its offer in response to a solicitation for a shear was improperly rejected as technically unacceptable where a competitor offered the same shear at a lower cost and the award was based on cost, since the other firm, not the protester, would be in line for the award if the shear were found acceptable.

DECISION

Discount Machinery and Equipment, Inc., protests the elimination, after discussions, of the proposal it submitted in response to Department of the Navy request for proposals (RFP) No. N00600-88-R-0330.

We dismiss the protest.

The RFP requested a current production model hydraulic metal squaring shear, manufactured in accordance with military specification No. MIL-S-80086D. The solicitation listed the technical specifications that the shear was required to meet and provided that the contract would be awarded to the low, technically acceptable offeror.

The Navy received 11 offers and placed 5, including the offer submitted by Discount, in the competitive range. The agency then held written discussions with the five offerors and requested each to submit a best and final offer (BAFO). Discount offered a Betenbender 1/4-inch by 8-foot power operated hydraulic shear. In Discount's case, discussions were limited to a request to acknowledge an amendment to the solicitation which made some minor changes to the specifications for the shear. Discount submitted a BAFO acknowledging the amendment, and offered to provide the shear for \$31,100. The Navy reviewed Discount's BAFO and rejected it because the Navy found that it did not comply, and could not be altered to comply, with the RFP specifications.

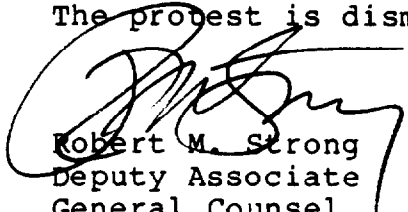
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Discount complains that its proposal was rejected for deficiencies that were not indicated in the Navy's request for a BAFO. Discount asserts that its offer did, in fact, meet the RFP's specifications, which Discount would have been able to demonstrate if the Navy had pointed out the alleged deficiencies. Discount thus concludes that it was denied a fair opportunity to compete for the award and requests that we advise the Navy to terminate the awarded contract and award the contract to Discount.

The Navy reports that during the initial technical evaluation it was erroneously determined that Discount's offer met the specifications and the offer was thus mistakenly included in the competitive range. During the evaluation of BAFOs, however, the technical evaluator realized that the Betenbender shear offered by Discount could not meet the specifications, without major modifications. At this point, Discount's offer was eliminated from the competitive range. The Navy notes that, in any event, a competitor, Don G. Jenness Co. Inc., offered the same Betenbender shear for \$26,190, and that offer was eliminated after discussions for the same reasons that Discount's offer was eliminated. The agency thus argues that Discount is not an interested party to maintain this protest because if it were sustained Don G. Jenness, the low cost technically acceptable offeror, and not Discount, would be the proper awardee.

We agree with the Navy. A protester is not "interested" under our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a), 21.1(a) (1988), if it would not be in line for award if its protest were upheld. First Federal Data Services Co., B-224183.2, Feb. 18, 1987, 87-1 CPD ¶ 179. Here, Discount does not argue that it would or could provide the offered Betenbender shear at a lower price, but only asserts that it should have been given the opportunity to demonstrate that its offered shear complied with the specifications. Therefore, if we determine that the Betenbender machine offered by Discount is acceptable, Don G. Jenness, not Discount, would be in line for award. Consequently, Discount is not an interested party, and we therefore will not consider the protest. Discount Machinery and Equipment, Inc., B-223462, Sept. 11, 1986, 86-2 CPD ¶ 286.

The protest is dismissed.



Robert M. Strong
Deputy Associate
General Counsel